

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

BKY No.: 18-60144

Joseph John Klebs,

Debtor.

**NOTICE OF HEARING AND OBJECTION TO
CONFIRMATION OF CHAPTER 13 PLAN**

Kyle L. Carlson, Chapter 13 trustee, by and through his undersigned attorney, hereby objects to confirmation of the Chapter 13 plan filed by the Debtor.

1. The Court will hold a hearing on this motion at 10:00 a.m. on Tuesday, May 1, 2018, in Courtroom 2, 204 United States Courthouse, 118 South Mill Street, Fergus Falls, Minnesota.

2. Any response to this motion must be filed and served not later than Thursday, April 26, 2018, which is five days before the time set for the hearing (including Saturdays, Sundays, and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

3. Kyle L. Carlson is the Chapter 13 trustee ("Trustee") of the Debtor in the above-referenced bankruptcy case. This case is pending before this Court.

4. This Court has jurisdiction over this matter under 28 U.S.C. Section 157 and 1334. This objection is brought pursuant to 11 U.S.C. §1324 and 1325, Bankruptcy Rule 3015 and Local Rule 3015. This matter is a core proceeding.

5. Debtor commenced this case by filing a voluntary Chapter 13 Petition on March 13, 2018. Debtor filed a Chapter 13 plan on that date. The plan provides for payments of \$265 per month for 60. This results in unsecured creditors being paid approximately \$12,997.

6. Trustee objects to confirmation on the basis that Debtor is not paying in all of his disposable income during the plan term. Debtor lists as expenses \$650 per month in food, \$180 per month for telephone and \$200 per month for cable and internet. These expenses appear high for a single individual. Debtor testified that he is help paying for expense of his girlfriend's children. However there is no disclosure of how much girlfriend is or can contribute to the household expenses. As a result in cannot be determined if Debtor is submitting all of his disposable income toward to payment of the plan.

7. Debtor lists a parcel of real estate in Rice Minnesota as an asset in Schedule A. He claims it exempt as his homestead in Schedule C. However, Debtor indicates in Schedule A that the property was foreclosed upon in October and there is no treatment of the mortgage on property in the plan. Debtor should verify that he is surrendering the property in the plan and disclose how the

mortgage holder is to be treated.

8. Debtor disclosed the he had owned vehicles which were repossessed prior to the filing. He also disclosed that he was in the midst of a divorce proceeding. Neither items were disclosed. Trustee contends that the Statement of Financial Affairs should be amended to disclosed in these proceedings.

9. For the forgoing reasons, the trustee contends that confirmation of Debtor' Chapter 13 plan should be denied.

WHEREFORE, Kyle L. Carlson requests an order as follows:

- (A) Denying confirmation of the Chapter 13 plan; and
- (B) Granting any other relief the Court deems just and proper.

Hedback & Carlson, PLLC

Dated: April 16, 2018.

____/e/ John A. Hedback____
John A. Hedback, #142438
Attorney for Chapter 13 Trustee
2855 Anthony Lane South, Suite 201
St. Anthony, MN 55418
(612) 436-3280
Attorneys for the Movant

UNITED STATES BANKRUPTCY COURT
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In re:

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VERIFICATION

The Trustee verifies under penalty of perjury that the information contained in the foregoing motion is true and correct to the best of the Trustee's knowledge, information and belief.

Dated: April 16, 2018.

/e/ Kyle L. Carlson

UNITED STATES BANKRUPTCY COURT
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Joseph John Klebs,

MEMORANDUM

Debtor.

Kyle L. Carlson, Chapter 13 trustee, (Trustee) hereby submit its memorandum of fact and law in support of its Objection to Confirmation (Motion).

I. STATEMENT OF FACTS

The facts supporting the Objection to Confirmation are set forth in the attached verified motion. In addition, Trustee also relies on the representations made by Debtor in his verified Schedules on file and of record herein.

II. STATEMENT OF LAW AND ARGUMENT

Section 1324 provides that a party in interest may object to confirmation of a plan. A Chapter 13 trustee would be such a party in interest.

Section 1325 provides that the Court shall confirm a plan if it meets certain requirements.

Section 1325(b)(1) provides that if an objection is filed by an unsecured creditor or the Chapter 13 trustee, the Debtor's plan must either pay unsecured creditors in full or provide for payment of all of Debtor's projected disposable income for the applicable commitment period. The applicable commitment period defined to be 3 years if the Debtor's current monthly income is less than median income for a household of the same size, unless the unsecured creditors are being paid in full. If the Debtor's household income exceeds the current monthly income then the applicable commitment period is 5 years. Disposable income is all income which is "not reasonably necessary to be expended... for the maintenance or support of the debtor or a dependant of a debtor..." (Section 1325(b)(2)(B)).

Hedback & Carlson, PLLC

Dated: April 16, 2018.

_____/s/ John A. Hedback_____
John A. Hedback, #142438
2855 Anthony Lane South, Suite 201
St. Anthony, MN 55418
(612) 436-3280
Attorneys for Movant

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**UNSWORN DECLARATION FOR
PROOF OF SERVICE**

Debtor.

The undersigned, being an employee of Hedback & Carlson, PLLC, attorneys licensed to practice law in this Court, with office address of 2855 Anthony Lane South, Suite 201, St. Anthony, MN 55418, declares that on the date below, I served the following:

1. Notice of Hearing and Objection to Confirmation of Chapter 13 Plan;
2. Verification;
3. Memorandum;
4. Unsworn Declaration for Proof of Service; and
5. Proposed Order.

upon each of the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at St. Anthony, MN addressed to each of them as follows:

Joseph John Klebs
821 7th Street North
Sartell, MN 56377

and I certify under penalty of perjury, that the foregoing is true and correct.

Dated: April 16, 2018

_____/e/ John A. Hedback____

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

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Joseph John Klebs,

ORDER

Debtor.

This case came before the Court on the confirmation of the Debtor's Chapter 13 plan. An objection to confirmation has been filed by Kyle L. Carlson, Chapter 13 trustee. Appearances were noted on the record. Based on the file, record and proceedings herein,

IT IS ORDERED:

1. Confirmation of the Debtor's Chapter 13 plan is denied.

BY THE COURT

Dated:

Michael E. Ridgway
United States Bankruptcy Judge